2292.

SUPREME COURT OF THE UNITED STATES.

No. 70.

L. E. STAINBACK AND AL., CLAIMANTS OF THE SHIP WASHINGTON, HER TACKLE, &c., APPELLANTS,

vs.

WILLIAM A. RAE, IN HIS OWN RIGHT, AND AS ADM'R OF JOSEPH PORTER WHEELER, DECEASED, AND EDMUND CROSBY, MASTER, OWNERS OF THE SHIP MARY FRANCES, AND FREDERICK TUDOR, OWNER OF THE CARGO OF SAID SHIP, LIBELLANTS.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF MASSACHUSETTS.

Return to certiorari.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the district of Massachusetts, greeting:

Whereas, in a certain suit in said circuit court, between Joseph P. Wheeler and al., libellants, and the Ship Washington, her tackle, &c., C. McFarland and al., respondents, which suit was removed to the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit:

"First. At the hearing in the court below the ownership and title of the several libellants was exhibited in proof, and was admitted by the respondents to have been, at the commencement of the voyage, described in the libel, in the several parties, libellants, in manner and form as is in said libel alleged; which proof and admission does not appear in the transcript of the record filed in this honorable court.

"Second. In the court below the value of the vessel, of the freight, and of the cargo, was ascertained by an assessment made under the

direction of the court, as is of record in said court; which assessment does not appear in the transcript of the record filed in this court."

You, therefore, are hereby commanded that, searching the records and proceedings in said cause, you certify what omissions you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, A. D. 1851.

WM. THOS. CARROLL,
Clerk Supreme Court United States.

UNITED STATES OF AMERICA,
Massachusetts district, ss.

In admiralty.

JOSEPH P. WHEELER and al.
vs.
SHIP WASHINGTON and al.

Pursuant and in obedience to the foregoing writ, I, Isaac O. Barnes, clerk of the circuit court of the United States for the first circuit, Massachusetts district, having searched the records and proceedings in the aforesaid cause, do hereby certify the following omissions, to wit:

Permanent, No. 463.

No. 463.

Register's seal.
(Signed)
R. H. GILLET,
Register.

Collector's seal.
(Signed)
W. A. WELLMAN,
D'y collector.

Naval officer's seal.
(Signed)
W. PARMENTER,
Naval officer.

(An act of the Congress of the U. S.)

In pursuance of an act of the Congress of the United States of America, entitled "an act concerning the registering and recording of ships or vessels," William A. Rea, of Boston, State of Massachusetts, ($\frac{5}{8}$) having taken or subscribed the oath required by the said act, and having sworn that he, with Joseph P. Wheeler, ($\frac{2}{8}$) of said Boston, and Edmund Crosby, ($\frac{1}{8}$) of Brewster, State aforesaid, are the only owners of the ship or vessel called the Mary Frances, of Boston, whereof Edmund Crosby is at present master, and a citizen of the United States, as he hath sworn, and that the said ship or vessel was built at Boston aforesaid, A. D. 1840, as per temporary register No. 101, issued at New York, April 7, 1846, now cancelled; property changed in part. And said register having certified that the said ship or vessel has two decks and three masts, and that her length is one hundred ten feet nine inches; her breadth twenty-five feet six inches; her depth twelve feet nine inches; that she measures three hundred twenty-six tons $\frac{4}{95}$ths; that she is a ship; has a square stern and a billet head. And the said Wm. A. Rea having agreed to the description and admeasurement above specified, and sufficient

security having been given according to the said act, the said ship has been duly registered at the port of Boston.

Given under our hands and seals at the port of Boston, this first day of December, in the year one thousand eight hundred and forty-seven.

CUSTOM-HOUSE, BOSTON, COLLECTOR'S OFFICE,
May 28, 1850.

This is to certify, that the within is a copy of the original as appears by the records of this office.

Given under my hand and seal of office this day and year above written.

[SEAL.] JOEL SCOTT, *D'y collector.*

Shipped in good order and condition by Frederick Tudor, on board the good ship called the Mary Francis, whereof is master for this present voyage, , now lying in the port of Boston, and bound for New Orleans, to-say:

Four hundred and forty-nine tons of ice, which is to be delivered in like good order and condition, excepting what may be lost by the natural waste of the article, at the aforesaid port of New Orleans, of said vessel, (the danger of the seas only excepted,) unto Messrs. Andrews and Dewey, or to their assigns, he or they paying freight for the said ice, four hundred and seventy-five dollars. The ice and fitting materials to be discharged by consignees with average accustomed.

Deliverable at 3d municipality for railroad ice houses.

It is agreed as follows:

1st. That, for the purposes of this contract, and also in case of average, said ice is of the value of seven dollars per ton as soon as the vessel has left the wharf where she was loaded.

2d. That no fish or meat, or other articles, shall be placed in said ice by owners, officers, or crew of said vessel.

3d. That the hold of the vessel where the ice is placed shall not be opened or exposed to the air, unless by stress of weather or wants of the vessel, in which case due protest shall be made, and an account kept of all the ice thrown overboard in case of jettison.

4th. That the vessel shall be regularly pumped out during the passage, so that the ice or fitting materials may not be unnecessarily wasted.

In witness whereof the master of the said vessel hath affirmed to three bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

Dated at Boston, 6 December, 1847.

WM. A. REA.

BOSTON, *December* 13, 1847.

SIR: Having heard of the loss of the ship Mary Frances, I abandon

to you the proportion of insurance on said ship, as per policy No. 21,354, issued at your office, and claim a total loss.

Respectfully,

WM. A. REA.

To CALEB CURTIS, esq.,
President Neptune Insurance Co.

Copy.

OFFICE OF THE TREMONT INSURANCE CO.,
Boston, Dec. 13, 1847.

JOSEPH P. WHEELER, esq.

DEAR SIR: Your letter of this day, abandoning to this company your interest in ship Mary Frances, as insured under policy No. 11,394, has been received. In reply I have to say, that said abandonment is not accepted.

Yours, respectfully,

(Signed) JOHN G. NAZRO,
President.

BOSTON, *December* 13*th*, 1847.

SIR: Having heard of the loss of the ship Mary Frances, I abandon to you the proportion of insurance on said ship, as per policy No. 8372, issued at your office, and claim a total loss.

Respectfully,

WM. A. RAE.

To SAMUEL POPE, esq.,
President Boston Insurance Co.

I also abandon my $\frac{1}{8}$th.

EDMUND CROSBY.

TUESDAY.

DEAR SIR: I received the amount of loss on my $\frac{3}{4}$ ship Mary Frances, from the different offices, as follows, in January and February, 1848:

Washington Insurance Company, (less premium) - -	$4,500
Neptune Insurance Company, (less premium) - -	4,500
Boston Insurance Company, (less premium) - -	4,500
And from Equitable on freight - - - -	3,000
And J. P. Wheeler received from Tremont office, February 17, (less premium) - - - - -	3,000

Respectfully,

WM. A. REA.

BOSTON, *December* 13, 1847.

SIR: Having heard of the loss of the ship Mary Frances, I abandon

to you the proportion of insurance on said ship, as per policy No. 10,100, issued at your office, and claim a total loss.

Respectfully,

WM. A. REA.

To THOMAS LAMB, esq.,
President Washington Insurance Co.

7 vol., 222 p. Br. Cynosure.

BOSTON, *December* 13, 1847.

J. G. NAZRO, esq.,
President Tremont Insurance Co.

DEAR SIR: Being informed by Captain Crosby, of the ship Mary Frances, that said ship was run down, and being compelled to abandon her at sea, I hereby abandon said vessel to your company, and claim total loss under policy No. 11,394, issued by them for $3,000.

Your obedient servant,

JOS. P. WHEELER.

The protest can be seen at Thomas A. Dexter's, (the notary public.)

Copy.

No. 21,354.

By the Neptune Insurance Company.

This policy of insurance witnesseth, that the president and directors of the Neptune Insurance Company, do by these presents cause W. A. Rea to be insured, lost or not lost, four thousand five hundred dollars on the ship Mary Frances for one year from the tenth day of May, 1847, at noon, warranted not to carry grain in bulk, whereof is master for this present voyage, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is or shall be named or called; beginning the adventure upon the said ship as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor, twenty-four hours in safety, and on the property until landed.

Sum insured, $4,500.

Vessel valued at $18,000, including premium.

Property valued at $

Freight valued at $

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

Touching the adventures and perils which the said insurance company are contented to bear, and take upon them in this voyage, they are,—of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes or people, of what nation or

Including prem.

Am't of premium, 270
Policy, 1
$271

quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said ship or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston; provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flax-seed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent., exclusive in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. It is further agreed that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of sea-water with the articles so damaged. And that the company shall not be answerable for loss or damage, by wet or exposure to the elements, of goods insured as on deck. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance; to the charges whereof, the said insurance company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company, to the insured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance, by the insured, at and after the rate of six per cent. per annum; to add one per cent. for each passage to or from Mexico or Texas, and one per cent. if in north sea between 1st October and 1st March.

If there be any lime on board, fifty per cent to be added to the premium for the passage.

Partial loss on sheet iron, iron wire, Braziers' rods, iron hoops, and tin plates, is excepted.

And it is hereby agreed, that if the insured shall have made any other insurance upon the ship aforesaid prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said insurance company shall return the premium, or ratable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be

exonerated from by such prior insurance; provided, that no return premium shall be made for any passage, whereon the risk has once commenced. And in case of any insurance upon the said ship, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said insurance company shall nevertheless be answerable, to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner, as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company, from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have a right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers, in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

¶It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure, or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular, or colonial court, shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment, as of a partial loss, shall exceed half the amount insured; and, in case of a total loss of the vessel, with salvage, the amount allowed out of the salvage, to the officers and crew, for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted, in adjusting the loss. It is further agreed, that, if any dispute shall arise, relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award, in writing, shall be conclusive and binding on

all parties. The company is not liable for wages or provisions, except in general average.

In witness whereof, the president of the said Neptune Insurance Company hath signed, and the secretary thereof hath countersigned this policy, at their office, in Boston, this twentieth day of May, one thousand eight hundred and forty-seven.

A true copy. Attest.

President.
J. H. GARDNER, *Secretary.*

BOSTON, *January* 20, 1848.

Received four thousand five hundred dollars in full for total loss on this policy. $4,500.

Signed, WM. A. REA.

A true copy from records.

J. H. GARDNER, *Secretary.*

Neptune Insurance Company, W. A. Rea, No. 21,354, ship Mary Frances.

$4,500	- -	6	270
Policy,	- -		1
Premium note, Payable		months	$271

Copy.

No. 11,394.

By the Tremont Insurance Company.

Warranted by the assured free from any loss or expense by capture, seizure, restraint, blockade, condemnation, plunder, waste, or destruction by any power, and also from any loss whatever occurring while under detention or restreint, any stipulations in this policy to the contrary notwithstanding.

This policy of insurance witnesseth, that the president and directors of the Tremont Insurance Company, in the city of Boston, do, by these presents, cause Joseph P. Wheeler to be insured, lost or not lost, for whom it may concern, three thousand dollars on ship Mary Francis, for one year from August twenty-eighth, 1847, at noon. Prohibited from carrying grain in bulk Whereof is master for this present voyage, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is or shall be named or called, beginning the adventure upon the said ship as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

Sum insured $3,000.

Vessel valued at $14,000, including premium.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather or other unavoidable accidents, without prejudice to this insurance.

Freight valued at $, including premium.

Amount of premium $195
Policy 1
$196

Touching the adventures and perils which the said insurance company are contented to bear and take upon them in this voyage, they are of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses and misfortunes which have or shall come to the damage of the said ship, or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston; provided, that the insurers shall not be liable for any impartial loss on hemp and flax, unless theloss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flax seed, bread, tobacco, and rice, unles the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent., exclusive in each case of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock, and other common property of the said insurance company, to the insured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance by the insured, at and after the rate of six and one-half per cent.; one per cent. if in the North sea between October 1st and March 1st, and one per cent. each passage to or from Mexico or Texas.

Partial loss is excepted on sheet iron, iron wire, brazier's rods, iron hoops, and tin plates.

And it is hereby agreed, that if the insured shall have made any other insurance upon the ship aforesaid, prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage or from one port of lading or discharge to another; and the said insurance company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance; provided, that no return premium shall be made for any passage, whereon the risk has once

commenced. And in case of any insurance upon the said ship, whether it be for the whole or part of the voyage subsequent in date to this policy, the said insurance company shall, nevertheless, be answerable to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers, and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment on notes not due. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor until proof is exhibited of condemnation, or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign consular or colonial court, shall not be conclusive upon the parties as to the fact of their having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged, without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise, relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company are not liable for wages or provisions, except in general average.

In witness whereof, the president of the said Tremont Insurance Company hath hereunto subscribed his name, and caused the same to

be countersigned by their secretary, at their office in Boston, this twenty-eighth day of August, one thousand eight hundred and forty-seven.

President.

Secretary.

FEBRUARY 17, 1848.

Received three thousand dollars for total loss of ship Mary Francis insured within.

$3,000. (Signed) JOSEPH P. WHEELER.

Endorsed—Tremont Insurance Company, No. 11,394, ship Mary Frances; Joseph P. Wheeler.

$3,000, 6½ - - - - - - - -	$195
Policy, - - - - - - - -	1
Note 14 months, from August 28th 1847, - - -	$196

August 28, 1847.

Copy.

No. 10,100.

By the Washington Insurance Company.

Sum insured, $4,500.

Ship valued at $18,000, including prem.

Premium, $270.

This policy of insurance witnesseth, that the president and directors of the Washington Insurance Company do by these presents cause to be insured, lost or not lost, Wm. A. Rea, for whom it concerns, payable to him in case of loss, forty-five hundred dollars, on one-fourth of ship Mary Frances, at and from the port or place where said ship was on the 9th day of May, 1847, at noon, to and at all ports and places to which she may proceed for one year from that time, whereof is master for this present voyage, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is or shall be named or called; beginning the adventure upon the said ship as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed.

And it shall be lawful for the said vessel, in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

Touching the adventures and perils which the said Insurance Company are contented to bear, and take upon them in this voyage, they are of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured be owner of the

vessel) and of mariners, and all other losses, and misfortunes, which have or shall come to the damage of the said ship, or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston: provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flax-seed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel, or freight, unless it amount to five per cent., exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants, and assigns, to sue, labor, and travel for, in, and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute, in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company, to the insured, his executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance, by the insured, at and after the rate of six per cent., to add one per cent. for each passage to or from Mexico or Texas, and to add one per cent. if in the North sea between October 1 and March 1.

And it is hereby agreed, that if the insured shall have made any other insurance upon the ship aforesaid, prior in date to this policy, then the said Insurance Company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said insurance company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance: provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any insurance upon the said ship, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said insurance company shall nevertheless be answerable, to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note,

if unpaid, and all sums due to the company, from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention, (by capture or other arrest,) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured, in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure, or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign, consular, or colonial court, shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment, as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned, or services rendered previously to the loss, shall be considered as so much of the salvage applied to the use of the ship-owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise, relating to a loss on this policy, it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions except in general average.

In witness whereof, the president of the said Washington Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this twentieth day of May, one thousand eight hundred and forty-seven.

President.

Secretary.

BOSTON, *September 7th*, 1847.

Received from Washington Insurance Company six hundred

eighteen and $\frac{78}{100}$ dollars, in full for general average loss under this policy.

$618 78. (Signed) WM. A. REA.
Per HENRY WASHBURN.

BOSTON, *January 29th*, 1848.

Received from the Washington Insurance Company forty-five hundred dollars, in full, for total loss under this policy of ship Mary Frances, and hereby agree to pay over to said company all that I may hereafter receive from said ship or proceeds for that portion insured by this policy.

(Signed) WM. A. REA,
By W. A. HAYES, JR.

Endorsed—Washington Insurance Company; Wm. A. Rea, No. 10,000, ship Mary Frances.

$4,500 - - -	6 per cent. - - -	$270
Policy - - - - - - - - - -		1
		$271

Cr. 14 months.

Copy of Record.

No. 8,372.

By the Boston Insurance Company.

This policy of insurance witnesseth, that the president and directors of the Boston Insurance Company in the city of Boston, do by these presents cause Wm. A. Rea, for whom it concerns, payable to said Rea, to be insured, lost or not lost, forty-five hundred dollars on ship Mary Francis, for one year from the twenty-third day of July, 1847, at noon, excluded from ports and places in Texas or Mexico, whereof is master for this present voyage, or whosoever else shall be master in the said vessel, or by whatsoever other name or names the said vessel, or master thereof, is, or shall be named or called; beginning the adventure upon the said ship as aforesaid, and to continue during the voyage aforesaid, on the vessel until she shall be arrived and moored at anchor twenty-four hours in safety, and on the property until landed. And it shall be lawful for the said vessel in her voyage, to proceed and sail to, touch and stay at, any ports or places, if thereunto obliged by stress of weather, or other unavoidable accidents, without prejudice to this insurance.

Sum insured, $4,500.

Ship valued at $18,000, including premium.

Amount of premium, $270
Policy, 1
$271

If there be any time on board, fifty per cent. to be added to the premium for the passage.

In all cases of over insurance, 10 per cent. of the return premium to be retained, not exceeding half per cent. on amount of short property.

Partial loss on sheet iron, iron wire, braziers' rods, iron hoops, and tin plates, is excepted.

Touching the adventures and perils which the said insurance company are contented to bear, and take upon them in this voyage, they are, of the seas, fire, enemies, pirates, assailing thieves, restraints and detainments of all kings, princes, or people, of what nation or quality soever, barratry of the master, (unless the insured be owner of the vessel,) and of mariners, and all other losses, and misfortunes, which have or shall come to the damage of the said ship, or any part thereof, to which insurers are liable by the rules and customs of insurance in Boston; provided, that the insurers shall not be liable for any partial loss on hemp and flax, unless the loss amount to twenty per cent. on the whole aggregate value of such articles; nor for any partial loss on sugar, flaxseed, bread, tobacco, and rice, unless the loss amount to seven per cent. on the whole aggregate value of such articles; nor for any partial loss on salt, grain, fish, fruit, hides, skins, or other goods that are esteemed perishable in their own nature, unless it amount to seven per cent. on the whole aggregate value of such articles, and happen by stranding; nor for any partial loss on other goods, or on the vessel or freight, unless it amount to five per cent., exclusive, in each case, of all charges and expenses incurred for the purpose of ascertaining and proving the loss; but the owners of such goods shall recover on a general average. It is further agreed that the insurers shall not be liable for damage or injury to goods by dampness, change of flavor, or by being spotted, discolored, or mouldy, unless the same be caused by actual contact of seawater with the articles so damaged. And that the company shall not be answerable for loss or damage, by wet or exposure to the elements, of goods insured as on deck. And in case of any loss or misfortune, it shall be lawful for the insured, his factors, servants and assigns, to sue, labor, and travel for, in and about the defence, safeguard, and recovery of the said ship, or any part thereof, without prejudice to this insurance, to the charges whereof the said insurance company will contribute in proportion as the sum insured is to the whole sum at risk. And so the president and directors aforesaid are contented, and do hereby bind the capital stock and other common property of the said insurance company, to the insured, executors, administrators, and assigns, for the true performance of the premises, confessing themselves paid the consideration due unto them for this insurance, by the insured, at and after the rate of six per cent., to add one per cent. if in North sea between October 1 and March 1.

And it is hereby agreed, that if the insured shall have made any other insurance upon the ship aforesaid, prior in date to this policy, then the said insurance company shall be answerable only for so much as the amount of such prior insurance may be deficient towards fully covering the property at risk, whether for the whole voyage, or from one port of lading or discharge to another; and the said insurance

company shall return the premium, or a rateable part thereof, upon so much of the sum by them insured, or for such part of the voyage as they shall be exonerated from by such prior insurance; provided, that no return premium shall be made for any passage whereon the risk has once commenced. And in case of any insurance upon the said ship, whether it be for the whole or part of the voyage, subsequent in date to this policy, the said insurance company shall nevertheless be answerable, to the full extent of the sum by them herein insured, without right to claim contribution from such subsequent insurers; and shall accordingly be entitled to retain the premium by them received, in the same manner as if no such subsequent insurance had been made. And in case of loss, such loss shall be paid in sixty days after proof and adjustment thereof, the amount of the premium note, if unpaid, and all sums due to the company, from the insured, when such loss becomes due, being first deducted, and all sums coming due being first paid or secured to the satisfaction of the said president and directors, they discounting interest for anticipating payment. It is also agreed, that in case of capture or detention, the insured shall not have the right to abandon therefor, until proof is exhibited of condemnation, or of the continuance of the detention (by capture or other arrest) for at least ninety days; and that the insured shall not abandon in consequence of the port of destination being blockaded, but the vessel shall, in such case, have liberty to proceed to another port not blockaded, and there end the voyage, or wait a reasonable time for the blockade of the original port of destination to be raised; and that the acts of the insured or insurers in recovering, saving, and preserving the property insured in case of disaster, shall not be considered a waiver or acceptance of an abandonment.

It is also agreed, that the insurers shall not be answerable for any charge, damage, or loss, which may arise in consequence of seizure, or detention, for, or on account of, illicit or prohibited trade, or trade in articles contraband of war; but the judgment of a foreign, consular, or colonial court, shall not be conclusive upon the parties, as to the fact of there having been articles contraband of war on board, or as to the fact of an attempt to trade in violation of the laws of nations. It is also agreed, that this policy shall be void in case of its being assigned, transferred, or pledged without the previous consent in writing of the insurers. It is also agreed, that the insured shall not have the right to abandon the vessel for the amount of damage merely, unless the amount which the insurers would be liable to pay, under an adjustment as of a partial loss, shall exceed half the amount insured; and in case of a total loss of the vessel with salvage, the amount allowed out of the salvage to the officers and crew, for wages earned, or services rendered, previously to the loss, shall be considered as so much of the salvage applied to the use of the ship-owners, even although the same should be allowed or paid under the name of salvage, and not as wages, and shall accordingly be deducted in adjusting the loss. It is further agreed, that if any dispute shall arise, relating to a loss on this policy,

it shall be submitted to the judgment and determination of arbitrators mutually chosen, whose award in writing shall be conclusive and binding on all parties. The company is not liable for wages or provisions, except in general average.

In witness whereof, the president of the said Boston Insurance Company hath hereunto subscribed his name, and caused the same to be countersigned by their secretary, at their office in Boston, this fourteenth day of June, one thousand eight hundred and forty-seven.

P. W. FREEMAN, *Secretary.* *President.*

Boston, Decr. 6th, 1847. It is agreed that the sale and transfer of one-eighth of Mary Francis shall not vitiate this policy, but said one-eighth is to be considered in this insurance for account of Capt. Edmund Crosby, and payable to him in case of loss.

(Signed) LEMUEL POPE,
President.

(Signed) P. W. FREEMAN,
Secretary.

Boston, Jan. 14th, 1848. Rec'd of Boston Insurance Co. one thousand dollars, in part of loss ship Mary Francis, insured in policy No. 8,372, of which this is a record.

$1,000. (Signed) WM. A. REA.

Boston, Feb. 8th, 1848. Rec'd of Boston Insurance Co., thirty-five hundred dollars in full, for balance of loss due for loss of ship Mary Francis, insured in policy No. 8,372, of which this is a record.

$3,500.

(Signed) WM. A. REA,
For self and Edmund Crosby.

Whereas the Washington Insurance Company, the Neptune Insurance Company, the Tremont Insurance Company, and the Boston Insurance Company, have severally heretofore, on divers days, on or about the twentieth day of January, eighteen hundred and forty-eight, paid to us, Joseph Porter Wheeler, and William A. Rea, and Edmund Crosby, divers sums of money, amounting in all to sixteen thousand five hundred dollars, being the amounts due to us upon our several policies of insurance issued by the said several companies as and for a total loss upon the ship Mary Frances, by collision at sea with the ship Washington, insured under said policies; and whereas a suit in admiralty had been instituted in the United States district court in and for the district of Massachusetts, prior to the said several payments so made to us, to recover damages from the ship Washington, her freight and owners, by us and in our names, with others interested in the cargo of the Mary Frances, which suit was pending in said court, at the time of said payment, and is now pending in the United States circuit court, in and for said Massachusetts, and, upon payment of the said several sums of money to us, it was understood that we did abandon, assign, and transfer the said suit or action unto the said companies.

Now, therefore, in consideration of the said several payments made to us as aforesaid, receipt whereof is hereby fully acknowledged, we, the said Wheeler, Rea, and Crosby, do hereby abandon, assign, and transfer, and set over, unto the said Washington Insurance Company, the said Neptune Insurance Company, the said Tremont Insurance Company, and the said Boston Insurance Company, their successors and assigns, all our right, title, interest, property, and claim, in and to the said suit or action above described, or the damages therein sought to be recovered against the said Washington, and her freight and owners, and all sums of money that may be recovered upon any judgment, process, or execution, growing out of, or issuing from, court in the said action.

And we do authorize them to conduct said action at their discretion and cost, and in our names, and instruct the adverse parties in said cause to pay whatever they may have to pay in said suit to the said companies, or their order, and authorize them, the said companies, to receipt therefor in our names, but for their own use, in the proportions the several sums paid as aforesaid by them shall bear to the whole amount so paid by them as first above named.

In testimony whereof we have hereto set our names and seals, this —— day of June, A. D. eighteen hundred and fifty.

Executed in presence of—

JOS. P. WHEELER, [SEAL.]
WM. A. REA, [SEAL.]
E. CROSBY, [SEAL.]
By W. A. REA.

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts.

October term, 1851. To wit, December 2, 1851.

JOSEPH P. WHEELER et al.
vs.
Ship WASHINGTON.

In the above entitled cause the court have decreed for the libellants, and appointed Edward G. Loring, esquire, commissioner, &c., to assess the amount for which the decree is to be entered.

By the court.

ISAAC O. BARNES, *Clerk.*

CIRCUIT COURT OF THE UNITED STATES,
District of Massachusetts, ss.

J. P. WHEELER et al.
vs.
Ship WASHINGTON.

Master's report.

In the above entitled cause, under the order hereto prefixed, I heard

the parties to said cause by their counsel and witnesses, and it appeared,

That the ship Washington, at the time of her destruction, was worth the sum of fourteen thousand dollars.

That the ice laden on board said ship Washington was her entire cargo, and was in quantity four hundred and forty-nine tons; that its value at the place and time of its shipment, viz., at Boston, on the 6th December, 1848, laden on board, was two dollars per ton; and that its value in New Orleans, the place of its destination, at or about January 7, 1849, the time for its arrival by an ordinary passage, would have been seven dollars per ton.

That the freight on said ice agreed to be paid was four hundred and seventy-five dollars.

That no evidence relating to any other matters was submitted to me.

And thereupon I found, and report:

1. That there should be assessed for the ship Washington $14,000
2. That there should be assessed for 449 tons of ice, - 998

Amount brought over, - - - $14,998

3. That there should be assessed for the freight aforesaid, 475

Making together the amount of fifteen thousand four hundred and seventy-three dollars damages, for which said decree is to be entered, and the costs of this reference are specified in the schedule below. All which is respectfully submitted.

Dec. 5, 1851. EDW. G. LORING,
Com'r and M. C.

Master's fee $25 00.

In testimony whereof I have hereunto set my hand and affixed the [SEAL.] seal of said circuit court, this fourth day of December, A. D. one thousand eight hundred and fifty-two, and in the seventy-seventh year of the independence of the United States of America.

ISAAC O. BARNES, *Clerk.*